

# **VERDONIK METHOD AND SYSTEM FOR SHARING VENTURES INVESTMENTS**

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## **FIELD OF THE INVENTION**

10           The invention related to a method of structuring investments by allowing investors to capture investment returns from part of the benefits that other people and businesses gain as a result of the growth of a company.

## **BACKGROUND OF THE INVENTION**

15           In the field of investing, it is desirable to (i) increase return on investments; (ii) decrease the risk of loss; (iii) decrease the risk of dilution; and (iv) provide cash returns on investments that normally do not provide annual cash returns and are generally illiquid for many years. Methods of accomplishing the above can be used for investments in companies in a wide range of industries and at any stage of development to raise capital and by investors to achieve their investment goals. Such an approach is likely to be particularly useful in addressing many problems associated with young technology companies that rely on long-term seed capital and venture capital to fund their start-up and growth. Similarly, Vendors may wish to establish an approach to establish long-term relationships with customers and by investment bankers and other intermediaries and service providers (including lawyers and consultants) to sell securities and structure investment transactions.

20           To understand how such a system could be used to advantage, it is useful to understand how companies normally raise capital and the problems these capital raising practices cause or fail to address. The following example illustrates typical start-up and growth investment and capital raising practices. Not all companies go through each of these steps, but together they illustrate the basic tools utilized by growth companies and many other companies.

- Step 1.** Founder of company has idea and implements it.
- Step 2.** Founder or university or employer protects idea with patent, copyright, or trade secret protection and incurs expense.
- Step 3.** Company ("Issuer") is formed. Founders invest and receive stock.
- Step 4.** Idea and surrounding intellectual property rights are either transferred to or licensed to the Issuer. If a university is involved, it may receive a royalty based on a percentage of sales revenue, fixed payments based on certain milestone events and/or stock.
- Step 5.** Issuer raises seed capital from one or more investors ("Angel Investors") through the sale of equity and/or debt securities.
- Step 6.** Issuer rents space, hires professionals and consultants, hires employees and purchases equipment, goods and services from an wide range of providers ("Vendors"). Vendors sometime purchase securities of Issuers for cash or in exchange for products or services. One or more Vendors may offer Issuers discounts to attract business from the Issuers. These discounts go to reduce the operating expenses of the Issuers and are not paid to Investors. Some Vendors receive a percentage of money raised by Issuers as a result of their services. Part of these fees may consist of securities of Issuers. For example, investment bankers, broker-dealers and other finders. Investment bankers and others, however, do not share their fees with Investors. Some Vendors invest in companies to which they sell products and services and receive securities in return for either cash or products and services.
- Step 7.** Issuer raises more capital through the sale of additional equity and/or debt securities. These sales of securities dilute the interests of Founders and earlier Angel Investors (the "Series A Round").
- Step 8.** Issuer purchases more goods and services from existing and new Vendors.
- Step 9.** Issuer begins selling or licensing goods, services or technology to generate revenue.
- Step 10.** Issuer raises more capital through sales of equity and/or debt securities (the "Series B Round").

- Step 11.** Issuer obtains line of credit from bank or other lender.
- Step 12.** Issuer leases equipment from equipment lessor, which may be a Vendor or a financial institution. The Issuer may give the equipment lessor equity securities or a warrant in addition to lease payments.
- Step 13.** Issuer hires more employees and purchases more goods and services from Vendor.
- Step 14.** Issuer raises more capital through sales of equity and/or debt securities (the “Series C Round”).
- Step 15.** Issuer obtains technology through licenses from third parties (“Technology Licensors”) and agrees to pay royalties based on a percentage of sales.
- Step 16.** Issuer sales grow.
- Step 17.** More of prior steps occur.
- Step 18.** Issuer is either sold (“Sale”) or sells its securities to the public in an initial public offering (“IPO”). Sale and IPO are hereafter referred to as (“Exit Events”).

The foregoing process are the typical steps that occurs in the founding and growth of a company.

- In an ideal scenario, the Issuer meets its business plan targets on schedule, revenues grow, the
- 5 Issuer becomes profitable and each time the Issuer raises money it does so at a higher valuation, with the result that the value of securities owned by Founders and Angel Investors and other earlier investors increases with each investment round as later investors pay more in each investment round. Even in the ideal situation, however, Founders, Angel Investors and other investors often receive little or no cash return on their investment until after the Exit Event
- 10 occurs. All the value of their interests is illiquid.

- In many cases, however, the ideal scenario does not occur. Founders are fired. Later investors purchase stock at the same or lower prices than earlier investors. Founders, Angel Investors and other earlier investors are diluted by later rounds of investments and the value of their securities
- 15 decreases. This decrease may lower values substantially below the price they paid for their securities or the opportunity cost of time and effort invested by Founders. (See Investment Return Table Below)

In some cases, therefore, later round investors make money when the Exit Event occurs, but Founders, Angel Investors and other early stage investors may lose money when the Exit Event occurs.

- 5 In other cases, an Issuer may be liquidated or simply go out of business with little or no sales proceeds. In these cases, all investors may suffer losses.

A primary problem caused by the current capital raising system outlined above is that the earliest stage investors invest at a time when the risks are highest, but they often do not reap a level of  
10 reward that is commensurate with the level of risk. Later round investors, who face less risk when they invest, often obtain greater value compared to the level of risk they face.

This creates an imbalance in the availability of capital. Much more capital is available to later stage companies and insufficient amounts of capital is available to very early stage companies.

15 Another imbalance in the risk/reward system is that people other than investors often receive a large amount of the benefit of investments while risking little or no capital. For example, substantially all the capital invested by all investors is eventually paid to employees or vendors as companies purchase equipment, goods and services.

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## **SUMMARY OF THE INVENTION**

One object of the invention is based on addressing the noted imbalances by transferring some of the benefits employees and vendors receive to investors, who may include persons or entities that  
25 invest cash, employees and founders who invest time and effort, universities where the Issuer's technology was developed and others.

This invention includes a method of providing and obtaining investment return, comprising: (a) an Investor making an investment in a company; (b) the investment benefiting  
30 the company by allowing it to conduct operations; and (c) the operations benefiting vendors to the company when the company purchases, leases, licenses and/or acquires products and services. The investment return from the investment is based in whole or in part on (i) the amount of products and services acquired from vendors, (ii) the amount paid for products and services acquired from vendors, (iii) the amount obligated to be paid for products and services

acquired from vendors, and/or (iv) the amount of discounts and concessions agreed to by vendors. The investment return is paid by one or more of (i) the company receiving the investment, (ii) persons or entities affiliated with the company receiving the investment, (iii) vendors providing products or services, (iv) persons or entities affiliated with vendors, (v) persons or entities designated in investment documents, (vi) persons or entities designated by any person or entity described herein, (vii) other persons or entities acting on behalf of any person described herein and (viii) persons or entities acting for the benefit of any person described herein.

- 10 The invention creates a type of investment transaction, which allows investors to share in part of the economic benefits the companies ("Issuers") in which investments are made pay or grant to service providers, vendors, employees, company insiders and others. This would be in addition to whatever return investors make on their normal debt, equity or other investments. (See Investment Return Table Below) The invention may also be used as an stand alone without any other debt, equity or other investment.

One aspect of the invention is a method of providing investment return to, or on behalf of, or for the benefit of, investors and affiliated persons and entities who invest in the same company or an affiliated company. To conduct operations the company and its affiliates need to purchase, lease license or otherwise acquire products, services and technology from a wide range of sources ("Vendors"). Under the invention, all or part of the investment return provided to, or on behalf of, or for the benefit of, investors or their affiliates is derived directly or indirectly from the value Vendors receive in their transactions with Issuers and its affiliates. This is accomplished by providing cash, securities or other tangible or intangible assets to, or on behalf of, or for the benefit of, investors and affiliates, by, or on behalf of, or for the benefit of, Vendors or their affiliates or Issuers or their affiliates. The amount of such cash, securities, or other tangible or intangible assets is calculated either (i) based on discounts or other concessions from Vendors or their affiliates, or (ii) based on the value paid or payable to Vendors and their affiliates. The invention includes specific types of agreements and documents, including those defined in the invention as Vendor Sharing Arrangements and Issuer Sharing Arrangements. The invention can also be used (i) by investors to monitor or encourage companies to limit their expenditures for products and services, (ii) by Vendors to attract new customers and increase business from

existing customers and (iii) by investment bankers, brokers, dealers, attorneys, accountants and other consultants to attract business by providing services in connection with the transactions described in the invention and related transactions.

- 5 Another aspect of the invention is a process for ensuring the invention survives later investments by others in the same Issuer as more fully described in the Detailed Description of the Invention, which includes prohibitions on transfers of the benefits of the invention, penalties for attempted transfer and requirements that changes be approved by specified persons.
- 10 In another aspect, the invention involves creating investment transaction documents including provisions requiring the foregoing.

These and other more specific embodiments of the invention are discussed, hereafter, in the Detailed Description and are reflected in the claims.

- 15 The following table shows how much an early-stage investor who purchased 500,000 shares of Common Stock for \$1.00 per share (constituting 25% of the Issuer's fully diluted shares) would receive on sale of the Issuer at different sale prices, if the Issuer later raises another \$18,000,000 by selling Participating Preferred Stock at the prices shown in the table. Participating Preferred
- 20 Stock allows each holder to receive from proceeds of sale or liquidation of the company their original investment (and sometimes more than their original investment) before the remaining sale proceeds are divided among all shareholders of the Company, including holders of Participating Preferred Stock. The table assumes no other equity shares are issued.

## INVESTMENT RETURN TABLE

	Aggregate Investment	Price Per Share	Ownership % Fully Diluted	Return to Angel Investor on Issuer Sale				
				\$10 million	\$20 million	\$30 million	\$50 million	\$100 million
<b>Investor Common Stock</b>	\$500,000	\$1.00	25%					
<b>After Series A</b>	\$3,000,000	\$1.50	12.5%					
<b>After Series B</b>	\$5,000,000	\$1.00	5.5%					
<b>After Series C</b>	\$10,000,000	\$1.00	2.6%	\$0	\$52,600	\$468,000	\$833,000	\$2,132,000
<b>INVESTMENT TOTAL</b>	\$18,500,000							
<b>Sharing Payment Return*</b>				\$712,500	\$712,500	\$712,500	\$712,500	\$712,500
<b>Total Return</b>				\$712,500	\$765,100	\$1,180,500	\$1,545,500	\$2,844,500
<b>Sharing Payment as a % of Total Return</b>				100 %	93%	60%	46%	25%
*Calculated as described below								

### Additional Investment Return from Issuer Sharing Arrangements and Vendor Sharing Arrangements

If (i) the Issuer also had \$10 million in aggregate revenue during the period prior to the sale of the Issuer, and (ii) 25% of the Issuer's expenses were paid to Vendors covered by an Investor Sharing Arrangement and/or a Vendor Sharing Arrangement, and (iii) the agreed Sharing Payment averaged 10% of payments to covered Vendors, the Angel Investor would receive an additional \$712,500 as a result of the Vendor Sharing Arrangements and/or Investor Sharing Arrangements. How this is calculated is set forth below:

## CALCULATION OF ESTIMATE OF SHARING PAYMENTS

\$ 18,500,000	Aggregate Investment
+ 10,000,000	Revenue
\$ 28,500,000	5
x 25%	Percentage of Vendor Payments Covered by Investor or Vendor Sharing Arrangement
\$ 7,125,000	
x 10%	Percentage of Vendor Payments <sup>10</sup> to be Paid to Investors under Investor or Vendor Sharing Arrangement
\$ 712,500	Total Sharing Payments

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The foregoing calculation of Sharing Payment return was based on the following assumptions:

(i) the Issuer had \$10 million in aggregate revenue during the period prior to the sale of the Issuer, and (ii) 25% of the Issuer's expenses were paid to Vendors covered by an Investor Sharing Arrangement and/or a Vendor Sharing Arrangement, and (iii) the agreed Sharing Payment averaged 10% of payments to covered Vendors. Based on the foregoing assumptions, the Angel Investor would receive an additional \$712,500 in Sharing Payments as a result of the Vendor Sharing Arrangements and/or Investor Sharing Arrangements.

The method and system of the invention can be used to (i) increase return on investments; (ii) decrease the risk of loss; (iii) decrease the risk of dilution; and (iv) provide cash returns on investments that normally do not provide annual cash returns and are generally illiquid for many years. The invention may be used with companies in a wide range of industries and at any stage of development to raise capital and by investors to achieve their investment goals. The invention, however, is likely to be particularly useful in addressing many problems associated with young technology companies that rely on long-term seed capital and venture capital to fund their start-up and growth. The invention may also be used by Vendors to establish long-term relationships with customers and by investment bankers, attorneys, accountants, consultants and other intermediaries and service providers (including lawyers and consultants) to sell securities and structure investment transactions.



To ensure the desired results are achieved it is important that Vendor Sharing Arrangements and Issuer Sharing Arrangements not be terminated or changed when new investors invest in later rounds of investment. Provisions to include in Sharing Arrangements and/or other documents to avoid termination or changes are included in the Description of Invention below.

One inherent feature of the invention that helps to insulate against early termination or changes is that the invention has been designed not to impact the way investors typically value companies. Valuation models typically focus on revenue, profit, prices paid for shares, number of fully diluted shares and other factors on which the invention has little or no impact. Issuers need not even be a party to Vendor Sharing Arrangements, although Issuers can be parties. Both Vendor Sharing Arrangements and Issuer Sharing arrangements can be designed so as not to affect the Issuer's balance sheet or operating statement.

#### **BRIEF DESCRIPTIONS OF THE DRAWING**

Figure 1 is a block diagram illustrating a basic Issuer Sharing Arrangement;

Figure 2 is a block diagram illustrating a basic Vendor Sharing Arrangement;

Figure 3 is a block diagram illustrating a basic Issuer and Vendor Sharing Arrangement;

Figure 4 is a block diagram illustrating an Issuer and Vendor Sharing Arrangement;

Figure 5 is a block diagram illustrating an Issuer and Vendor Sharing Arrangement where sharing payments are reinvested;

Figure 6 is a block diagram illustrating an Issuer and Vendor Sharing Arrangement with Agent to share Payments to the investment entity;

#### **DETAILED DESCRIPTION OF INVENTION**

Capitalized Terms used in the Description of the Invention below are defined below.

The invention includes all means by which any benefit or value (including transfers of cash, cash equivalents, Securities and/or other tangible or intangible assets of any nature) (in addition to, or in lieu of, any increase in value of an Issuer, and/or one or more Members of the Same Issuer Group, in which an Investment is made) (hereinafter referred to as a Sharing Payment), is made to, or received by, or on behalf of, or for the benefit of, any person or entity that is an Investor in

an Issuer (and/or one or more Members of the Same Issuer Group) and/or any person or entity that is a Member of the Same Investor Group as such Investor, where the Sharing Payment is (i) transferred to, or on behalf of, or for the benefit of, such Investor and /or one or more Members of the Same Investor Group, by any Vendor to such Issuer and/or one or more Members of the  
5 Same Issuer Group, or any Affiliate of such a Vendor, (ii) measured by any payments or obligations to make payments, by, or on behalf, or for the benefit of an Issuer and/or one or more Members of the Same Issuer Group to any Vendor, or any Affiliate of any Vendor, or (iii) is measured by and discounts or other concessions which a Vendor or any of its Affiliates affords to the Issuer and/or any Member of the Same Issuer Group, in each case where the Investor  
10 and/or one or more Members of the Same Investor Group has made an Investment, or is considering making an Investment, in the Issuer and/or one or more Members of the Same Issuer Group, whether the transfer is made directly from Vendor or its Affiliate, or by or through the Issuer and/or one or more Members of the Same Issuer Group or any Agent or other means, In Connection with Vendor and/or any Affiliate of Vendor providing Products and/or Services to,  
15 or on behalf of, or for the benefit of, the Issuer and/or one or more Members of the Same Issuer Group.

The invention includes all uses (whether by itself, or as part of, or in conjunction with, or in connection with, any Affiliated Investment Transaction or series of Affiliated Investment  
20 Transactions, whether occurring at the same time, before and/or after, use of the invention) of (i) one or more Vendor Sharing Arrangements and/or (ii) one or more Issuer Sharing Arrangements, whether with or without an Agent, by any Investor, Member of the Same Investor Group, Issuer, Member of the Same Issuer Group, Vendor, Agent, Transaction Facilitator, Affiliate of any of the foregoing and/or any other person or entity, if use of the Vendor Sharing Arrangement and/or  
25 Issuer Sharing Arrangement has the purpose, effect or result of any one or more of the following: (i) benefiting (including transfers of cash, cash equivalents, Securities and/or other tangible or intangible assets of any nature) any Investor and/or one or more Members of the Same Investor Group (in addition to, or in lieu of, increasing the value of the Issuer, and/or one or more Members of the Same Issuer Group, in which the Investor and/or one or more Members of the  
30 Same Investor Group has Invested or is considering making an Investment), (ii) inducing any Investor, and/or one or more Members of the Same Investor Group, to enter into, close or

perform any Affiliated Investment Transaction and/or make any Investment in any Issuer and/or one or more Members of the Same Issuer Group and/or (iii) inducing any Issuer and/or one or more Members of the Same Issuer Group to purchase lease, license or otherwise acquire Products and/or Services from any Vendor (and/or any Affiliate of any Vendor or the designee of any Vendor or Affiliate), which Vendor is referred to (by name or as part of a category of Vendors) in any Issuer Sharing Agreement and/or Vendor Sharing Agreement or related document or agreement, whether or not a party to such Issuer Sharing Arrangement and/or Vendor Sharing Arrangement.

10 **Definitions:**

“**Affiliate**” Someone is an “Affiliate” of another person or entity if they are (i) an “affiliate as defined in Rule 405 of the Securities and Exchange Commission promulgated pursuant to the Securities Act of 1933, as amended, and any successor rule or regulation, (ii) an officer, director, manager, partner, shareholder, member or other full or part record and/or beneficial owner (directly or through another person or entity) of such person or entity and/or any Affiliate of such person or entity, (iii) entirely or partially owned of record and/or beneficially owned (directly or through another person or entity) by such person or entity and/or any Affiliate of such person or entity, and/or (iv) entirely or partially owned of record and/or beneficially owned (directly or through another person or entity) by a person or entity that entirely or partially owns of record and/or beneficially owns (directly or through another person or entity) such person and/or entity and/or any Affiliate of such person or entity.

“**Agent**” means any person or entity to which cash, cash equivalents, Securities and/or other assets are, or are to be, paid, issued or transferred by, or on behalf of, and/or for the benefit of, (i) an Issuer and/or one or more Members of the Same Issuer Group, (ii) an Investor and/or one or more Members of the Same Investor Group, (iii) one or more Vendors and/or the Affiliates of any Vendor and/or any of their designees, and/or (iv) any other person or entity, all or part of which cash, cash equivalents, Securities and/or other tangible or intangible assets are to be forwarded by the Agent to, or on behalf of, or for the benefit of, (i) an Issuer and/or one or more Members of the Same Issuer Group, (ii) an Investor and/or one or more Members of the Same Investor Group, (iii) one or more Vendors and/or the Affiliate of any Vendor and/or any of their

designees, and/or (iv) any other person or entity, pursuant to, or in connection with, any Sharing Arrangement, Affiliated Investment Transaction and/or any other oral or written agreement or other arrangement entered into in connection with, whether occurring at the same time, before or after, any Sharing Arrangement and/or Affiliated Investment Transaction or other transaction.

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**“Affiliated Investment Transaction”** means any Investment and/or other transaction (or series of investments and/or transactions) between or among (i) an Issuer and/or one or more Members of the Same Issuer Group and (ii) an Investor and/or one or more Members of the Same Investor Group, if such Investor and/or one or more Members of the Same Investor Group and/or any of their designees receives, or is to receive or benefit from, Sharing Payments pursuant to any Sharing Arrangement involving the same Issuer and/or one or more Members of the Same Issuer Group and/or any of their designees, whether the Sharing Arrangement is entered into at the same time, before or after, the Affiliated Investment Transaction.

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15 **“Investor”** in an Issuer or in a Member of the Same Issuer Group means any person or entity (and/or any Affiliate of such person or entity) that has made an Investment, is considering making an Investment, or intends to make an Investment in, or on behalf of, or for the benefit of, an Issuer and/or one or more Members of the Same Issuer Group (whether such Investment is made before, at the same time, or after, organization of, the Issuer or Member of the Same Issuer Group). Investors may, or may not, include one or more Vendors or Affiliates of Vendors.

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**“Investor Group”** means all the following: (i) all persons and/or entities that have Invested in, or intend to Invest in, or are considering Investing in, the same Issuer and/or one or more Members of the Same Issuer Group and/or (ii) the Affiliates of the Investor and/or one or more Members of the Same Investor Group.

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**“Investor Group Member”** or **“Member of the Same Investor Group”** means all persons and entities that are: (i) Investors in the same the Issuer and/or one or more Members of the Same Issuer Group, and/or (ii) any Affiliate or Agent of any Investor Group Member and/or (iii) any person or entity from which any Investor or Investor Group Member obtains capital to Invest in, or on whose behalf, of for whose benefit, any Investor Group Member Invests in, any Issuer and/or one or more Members of the Same Issuer Group and/or (iv) any person or entity that

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directs or otherwise causes any Investor or Investment Group Member to Invest in any Issuer and/or one or more Member of the Same Issuer Group.

5       **“Investment”** means (i) any purchase in exchange for anything of value (including, without limitation, for cash, cash equivalents, services, intellectual property and/or other tangible or intangible assets) of a Security, or option, warrant or other right to acquire any Security, (ii) any loan (whether or not constituting a Security) and/or other advance of cash, cash equivalents, Securities or other thing of value, (iii) any guaranty of any loan or other obligation, (iv) any providing security for any loan or other obligation, (v) payment of any loan or other obligation,  
10       (vi) any provision of anything of value that is in exchange for any person or entity entering into an Issuer Sharing Arrangement and/or a Vendor Sharing Arrangement or otherwise agreeing to make Sharing Payments, and/or (vii) any other transaction that would be considered an investment by persons in the financial or legal professions. **“Invest in”** or **Investing** means the act of making an Investment, including, without limitation, signing documents and forwarding  
15       payment for any Investment.

**“Investment Return”** means the total amount of cash, cash equivalents, Securities, financial instruments and other tangible or intangible assets as Investor or any member of the Same Investor Group receives as a result of any Investment, including an Issuer Sharing Arrangement,  
20       a Vendor Sharing Arrangement, any other transaction covered by this invention and/or Affiliated Investment Transactions.

**“Issuer”** means the corporation, limited liability company, partnership, limited partnership, trust or other person, entity or organization, in which an Investment is made by, or on behalf of, or for  
25       the benefit of, an Investor and/or one or more Members of the Same Investor Group. and/or (ii) any person or entity in which, or on whose behalf, or on whose behalf an Investment is made at the direction of an Issuer or any Issuer Group Member.

**“Issuer Group”** means (i) an Issuer, (ii) any Affiliate of the Issuer and/or of any Issuer Group  
30       Member and (iii) any Agent of the Issuer and/or of any Issuer Group Member.

**“Issuer Group Member”** and/or **“Member of the Same Issuer Group”** means (i) the Issuer and/or (ii) any Affiliate or Agent of any the Issuer and/or of any Issuer Group Member, (iii) any

person or entity in which, or on whose behalf, or for whose benefit, the Issuer and/or any Issuer Group Member makes an Investment and/or (ii) any person or entity in which, or on whose behalf, or for whose benefit, an Investment is made at the direction of an Issuer and/or one or more Members of the Same Issuer Group.

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**“Products and/or Services”** means any products, goods, equipment, raw materials, tools, services, intellectual property, contracts, contract rights, licenses, lease interests in real property or equipment, and/or any other tangible or intangible assets of any nature whatsoever. Products and/or Services also include any investment banking, broker-dealer, legal, accounting, consulting and/or other services useful in any Investor, Issuer, Vendor or other person or entity entering into a Vendor Sharing arrangement, an Issuer Sharing Arrangement, any Affiliated Investment Transaction and/or any other transaction included in this invention.

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**“Security”** means any stock, option warrant, other equity, debt and/or any other obligation or agreement that would constitute a “security” as defined in Section 2 of the Securities Act of 1933, as amended.

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**“Sharing Arrangement”** means any Issuer Sharing Arrangement and/or Investor Sharing Arrangement.

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**“Sharing Payment”** means any cash, cash equivalents, Securities, intellectual property and/or other tangible or intangible assets of any nature paid, issued and/or otherwise transferred to, or for the benefit of, or on behalf of, any Investor, one or more members of the same Investor Group and/or any or their Agents and/or any of their designees, by, or on behalf of, or for the benefit of, any Issuer, one or more Members of the Same Issuer Group, Vendor and/or Agent pursuant to any Sharing Arrangement.

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**“Transaction Facilitator”** means any investment banker, finder, attorney, accountant, consultant and/or other person or entity, who renders any service (including, without limitation, drafting, writing, advising, counseling, interpreting, structuring, closing, introducing participants in, and/or selling) to any person or entity in connection with (i) any Sharing Arrangement and/or (ii) any Affiliated Investment Transaction. Any Affiliate and/or subcontractor to a Transaction Facilitator is also a Transaction Facilitator.

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**“Vendor”** means (i) any person or entity that provides, sells, leases and/or otherwise transfers Products or Services, (ii) any person or entity that provides sells, transfers and/or licenses any intellectual property and/or (iii) any Affiliate, subcontractor, assignee or designee of any Vendor.

5 Someone is a Vendor to an Issuer and to all Members of the Same Issuer Group, if it is a Vendor to one or more Members of the Same Issuer Group.

**“Vendor Sharing Arrangement”** means (i) any oral or written Security, financial instrument or other agreement or obligation, (ii) that obligates one or more Vendors, Agents and/or any other  
10 persons or entities (iii) to make any Sharing Payments (with or without use of an Agent) (iv) to, on behalf of, or for the benefit of, an Investor and/or one or more Members of the Same Investor Group (v) in Connection with any Vendor (who may, or may not be named in the Vendor Sharing Arrangement) providing Products and/or Services to, or on behalf of, or for the benefit of, the Issuer and/or one or more Members the Same Issuer Group, (vi) if the Investor and/or one  
15 or more Members of the Same Investor Group (who receive the Sharing Payments, or on whose behalf, or for whose benefit, the Sharing Payments are made) has made, or is considering making, an Investment in such Issuer and/or one or more Members of the Same Issuer Group, whether such Vendor Sharing Arrangement is entered into before, at the same time or after, the Investment.

20 **“Issuer Sharing Arrangement”** means (i) any oral or written Security, financial instrument or other agreement (ii) that obligates an Issuer and/or one or more Members of the Same Issuer Group and/or any other persons or entities (iii) to make any Sharing Payments (with or without use of an Agent) (iv) to, or on behalf of, or for the benefit of, an Investor and/or one or more  
25 Members of the Same Investor Group (v) In Connection with any Vendor (who may, or may not, be named in the Issuer Sharing Arrangement) providing Products and/or Services to, on behalf of, or for the benefit of, the Issuer and/or one or more Members of the Same Issuer Group, (vi) if the Investor and/or one or more Members of the Same Investor Group (who receive the Sharing Payments, or on whose behalf, or for whose benefit, the Sharing Payments are made) has made,  
30 or is considering making, an Investment in the Issuer and/or one or more Members of the Same Issuer Group, whether such Issuer Sharing Arrangement is entered into before, at the same time or after, the Investment.

Sharing Payments made to, on behalf of, or for the benefit of, any Investor and/or one or more Members of the Same Investor Group pursuant to any Issuer Sharing Arrangement and/or any Vendor Sharing Arrangement are made **“In Connection”** with a Vendor providing Products and/or Services, to, or on behalf of, or for the benefit of, an Issuer and/or one or more Members of the Same Issuer Group (who receive the Sharing Payments, or on whose behalf, or for whose benefit, the Sharing Payments are made), in which an Investor and/or one or more Members of the Same Investor Group has made, or is considering making, an Investment, if providing Sharing Payments to, or for the benefit of, the Investor and/or one or more Members of the Same Investor Group:

- (i) becomes an obligation of the Issuer and/or one or more Members of the Same Issuer Group, Vendor, Agent and/or any other person or entity, upon, or within a designated time before or after, the provision to, or acceptance by, any person or entity (who may, or may not, be named in the Sharing Arrangement) of Products and/or Services by, on behalf of, or for the benefit of, the Issuer and/or one or more Members of the Same Issuer Group, in which the Investor and/or one or more Members of the Same Investor Group (that receives, or benefits from, the Sharing Payments), has made or is considering making, an Investment, whether the Issuer Sharing Arrangement and/or Vendor Sharing Arrangement is entered into at the same time, before, or after the Investment;
- (ii) becomes an obligation of the Issuer and/or one or more Members of the Same Issuer Group, Vendor, Agent and/or any other person or entity, upon, or within a designated time before or after, any payment to, or for the benefit of, or on behalf of, any Vendor, Agent and/or any other person or entity (who may, or may not, be named in the Sharing Arrangement) who provides Products and/or Services to, or for the benefit of, or on behalf of, the Issuer and/or one or more Members of the Same Issuer Group, in which the Investor and/or one or more Members of the Same Investor Group the Issuer and/or one or more Members of the Same Issuer Group by, on behalf of, or for the benefit of, the Investor and/or one or more Members of the Same Investor Group (that receives, or benefits from, the Sharing Payments), has made or is considering making an Investment, whether the Issuer Sharing Arrangement and/or Vendor Sharing Arrangement is entered into at the same time, before, or after the Investment;



- (iii) is measured by the amount of payments due or paid to, or for the benefit of, or on behalf of, any Vendor, Agent and/or other person or entity for Products and/or Services provided by Vendor, Agent and/or any other person or entity (who may, or may not, be named in the Sharing Arrangement) , to, or for the benefit of, or on behalf of, the Issuer and/or one or more Members of the Same Issuer Group, in which the Investor and/or one or more members of the same Investor Group (that receives, or benefits from, the Sharing Payments), has made or is considering making an Investment, whether the Issuer Sharing Arrangement and/or Vendor Sharing Arrangement is entered into at the same time, before, or after the Investment;
- (iv) is measured by the amount of any discounts and/or other concessions agreed to by, or on behalf of, any Vendor providing Products and/or Services to, or on behalf of, or for the benefit of, the Issuer and/or any member of the same Issuer Group, in which the Investor and/or one or more Members of the Same Investor Group (that receives, or benefits from, the Sharing Payments), has made or is considering making an Investment, whether the Issuer Sharing Arrangement and/or Vendor Sharing Arrangement is entered into at the same time, before, or after the Investment; and/or
- (v) would otherwise be considered by a reasonable person, knowing all the circumstances, to be connected to any Investment in, or on behalf of, or for the benefit of the Investor and/or one or more Members of the Same Investor Group (that receives, or benefits from, the Sharing Payments), whether the Sharing Arrangement is entered into at the same time, before, or after the Investment.

The foregoing definitions use terms such as “on behalf of” and “for the benefit of.” These terms mean that one person or entity is acting on behalf of another person or entity or are acting for benefit another person or entity.

#### **Provisions of Sharing Arrangements.**

The basic provisions of an Investor Sharing Arrangement and Vendor Sharing Arrangement are contained in the definitions above.

In addition to specifying the amount, conditions, timing and payees for Sharing Payments, Vendor Sharing Arrangements and/or Investor Sharing Arrangements many include any one or more of the following types of provisions or not.

- References to specific Vendors covered
- 5      • References to certain categories of Vendors covered
- Requirements that all Vendors or specific types of Vendors or a percentage of Vendors be covered
- Requirements that Investor or an Agent designate or approve the Vendors covered
- Requirements that Issuers not change Vendors without approval by Investor, Agent
- 10      and/or Vendors
- Requirements that Issuers deal exclusively with certain Vendors for certain time periods
- Requirements that Issuers order specific volumes as a condition to Vendor discounts or other concessions or Sharing Payments
- 15      • Requirements that payments be made to an Agent with specifications about division of payments by the Agent.
- Specification of the discount or other concessions, if any, to be afforded to Vendor to Issuer.
- Provisions allowing Investor and/or an Agent to select Vendors for Issuer and/or
- 20      negotiate arrangements with Vendors.

The specific structure for making Sharing Payments may vary according to the desired tax and accounting treatment and concerns about bankruptcy or other considerations. The mechanism for Investors or their designees receiving Sharing Payments may include any one or more of the

25      following, which may be included in the Issuer Sharing Arrangement, Vendor Sharing Arrangement and/or in another Security, agreement, or other document.

- Repurchase of all or some of the Investor's Securities of Issuer tied to the amount and timing of payment obligations in the Vendor Sharing Arrangement or Issuer Sharing Arrangements.

- A secured or unsecured recourse or non-recourse promissory note with the amount and timing of repayments tied to the amount and timing of payment obligations in the Vendor Sharing Arrangement or Issuer Sharing Arrangement.
- Dividends tied to the amount and timing of payments in the Vendor Sharing Arrangement or Issuer Sharing Arrangements.
- Contractual obligations by the Vendors to pay Investors, Agent and/or their designees.
- Contractual obligations of Issuers to pay Investors, Agent and/or their designees.
- Other mechanisms which may have a better tax, accounting or bankruptcy result.

Vendor Sharing Arrangements and/or Issuer Sharing Arrangements may include requirements that part or all of (i) the investment by Investors in Issuers; and/or (ii) payments from Issuers to or on behalf of Investors and/or Vendors and/or (iii) payments by Vendor to or on behalf of Investors and/or Issuers, be made to one or more third party collection Agents. Agents may have the duty and/or right to (i) verify compliance with Sharing Agreements; (ii) collect and/or make payments as required by Sharing Arrangements, (iii) protect cash from creditors of Issuers; and/or (iv) collect license fees for the owner of the invention. These Agents could also solicit and/or certify Vendors who desire to participate in Vendor Sharing Arrangements, maintain databases of Investors who like to invest in transactions that utilize Issuer Sharing Arrangements and/or Vendor Sharing Arrangements and introduce Investors, Issuers and Vendors to one another. These Agents might be owned by Investors, Vendors, Issuer or the owner or licensee of this invention, or be licensed by the owner of this invention, franchised by the owner of this invention or operate under another type of contract with an Investor, Vendor, Issuer or the owner or licensee of this invention. One or more trademarks may also be licensed. These Agents may be organized with regional territories, by industry or by other means.

In transactions between Issuers and Vendors either:

- (i) Issuer makes purchases from Vendors without discounts or other concessions from Vendors; or
- (ii) Vendor agrees to afford Issuer discounts and/or other concessions, all or part of which are shared with Investors.

The invention can be utilized (i) by itself as an independent investment, or (ii) in combination with any other type of equity and/or debt Security, promissory note, financial instrument, contract and/or other investment or other transaction.

- 5 The invention can be utilized by using computers (with or without a printer) or without using a computer.

#### **Termination or Change of Sharing Arrangements.**

- 10 Convincing later round investors not to require termination of Sharing Arrangements or changing Vendors as a condition to future investments may be very important to the return on investment Investors realize from Sharing Arrangements. If these terminations or changes occur, the amount recovered by Investors from Sharing arrangements may be limited to a percentage of the amount the Investor invests, which may constitute only a small portion of funds Issuers use to  
15 make purchases from Vendors.

#### **Provisions to Protect Against Early Termination and Changes.**

- One inherent feature of the invention that helps to insulate against early termination or changes is  
20 that the invention has been designed not to impact the way investors typically value companies. Valuation models typically focus on revenue, profit, prices paid for shares, number of fully diluted shares, and other factors on which the invention has little or no impact. Issuers need not even be a party to Vendor Sharing Arrangements, although Issuers can be parties. Both Vendor Sharing Arrangements and Issuer Sharing arrangements can be designed so as not to affect the  
25 Issuer's balance sheet or operating statement.

Nevertheless, it may be useful to include in the invention specific provisions that insulate against early termination or changes, or the Issuer changing to Vendors who are not covered by Sharing Agreements.

- 30 The invention may include a provision that makes termination of the Issuer Sharing Arrangement and/or Vendor Sharing Arrangement subject to approval by Investor, Vendor, Agent and/or a third party who is not the Issuer, Investor, Agent or Vendor. Such third party might become a party to the Issuer Sharing Arrangement and/or the Vendor Sharing Arrangement or might be a

third party beneficiary who receives some benefit from the Issuer Sharing Arrangement and/or Vendor Sharing Arrangement. This benefit could include a percentage of the amounts payable pursuant to such arrangements. This third party would have a vested interest in not terminating the arrangement and would therefore make it more difficult to terminate the arrangement. Since  
5 later investors may require Investors to either agree to waive their right to receive payments or to assign their right to receive payments, an alternative method would be to include provisions that rights to receive Sharing Payments cannot be assigned without the consent of the third party and/or that the right to receive Sharing Payments would automatically be transferred to the third party upon any attempt to waive or attempt to assign or transfer or any attempt by the Issuer to  
10 change Vendors. This person may become a part, to the investment agreements, or a third party beneficiary by reason of their having an economic interest in continuation of the obligation to make Sharing Payments. Alternatively, there could be a provision that requires the Issuer or other designated person or entity to pay a termination fee to Investor, Agent or other person or entity, if the Issuer Sharing Arrangement or Vendor Sharing Arrangement is terminated or  
15 amended or if the Issuer changes to Vendors who are not covered by Issuer Sharing Arrangements or Vendor Sharing Arrangements. The termination fee may discourage terminations or changes.

The invention may include agreements by current or later-stage investors not to require Sharing  
20 Arrangements to be terminated or changed as a condition to their later stage investments and/or not to require a change in Vendors, which would reduce or terminate payments under Sharing Agreements as a condition to later stage investments.

One or more of the following types of provisions could be included in an Issuer Sharing  
25 Arrangement and/or a Vendor Sharing Arrangement to encourage later investors not to require termination of Issuer Sharing Arrangements and/or Vendor Sharing Arrangements:

- Dollar limit on Sharing Payments
- Time limit on Sharing Payments
- Provisions requiring specific Vendors to be used
- 30 • Provisions requiring specific classes of Vendors to be used
- Provisions terminating or suspending Sharing Payment obligations upon the occurrence of specific events

- Provisions allowing Investor, an Agent or their designees to select all or certain categories of Vendors for Issuer and/or negotiate arrangements with Vendor.

### **Illustration of Certain Provisions.**

5 Issuer Sharing Arrangements may be in stand alone agreements or other documents, or be incorporated into other agreements or documents, including, without limitation, promissory notes (whether or not convertible or secured or unsecured, recourse or non-recourse), debentures, warrants, options, certificates or articles of incorporation, stock redemption agreements and/or  
10 other financial or investment agreements or instruments. A sample Issuer Sharing Arrangement in stand alone form is set forth below. Provisions from one agreement to the next may vary depending on the circumstances and goals of the parties and this sample is provided only as an example of one preferred embodiment of the invention. [Brackets] indicate an example of alternate alternative language that might be added in addition to, or in lieu of, the language not in  
15 [brackets].

### **SAMPLE FORM OF ISSUER SHARING ARRANGEMENT**

20 AGREEMENT dated as of \_\_\_\_\_ between \_\_\_\_\_, a \_\_\_\_\_ corporation ("Issuer") and \_\_\_\_\_ the investors listed on Schedule 1 hereto ("Investors") [and \_\_\_\_\_ ("Agent")] [and the Vendor listed on Schedule 2 hereto] [and \_\_\_\_\_ "Licensor")].

### **25 RECITALS**

To induce Investors to purchase the securities described on Schedule 1 hereto, Issuer [Agent] and Investors hereby agree as follows:

30 1. Issuer [Agent] shall make payments ("Sharing Payment") to Investors [Agent] equal to \_\_\_\_\_ percent (\_\_\_\_%) of the amount paid [or which become payable] by, or on behalf of, or for the benefit of, Issuer [Agent] [Licensor] and/or any Affiliate of Issuer on or after \_\_\_\_\_ [Add Date] for Products and/or Services provided by, or on behalf of, or for the benefit of, (i) the persons and/or entities listed on Scheduled 2 hereto (and/or any of their

Affiliates), and (ii) such persons and entities (and/or any of their Affiliates) designated by Investors [Agent] [Licensor] (persons and entities described in this Section are hereinafter referred to as “Vendors”).

5 “Affiliate” Someone is an “Affiliate” of another person or entity if they are (i) an “affiliate” as defined in Rule 405 of the Securities and Exchange Commission promulgated pursuant to the Securities Act of 1933, as amended, and any successor rule or regulation (ii) an officer, director, manager, partner, shareholder, member or other full or part record and/or beneficial owner (directly or through another person or entity) of such person or entity and/or any Affiliate of such  
10 person or entity, (iii) entirely or partially owned of record and/or beneficially owned (directly or through another person or entity) by such person or entity and/or any Affiliate of such person or entity, and/or (iv) entirely or partially owned of record and/or beneficially owned (directly or through another person or entity) by a person or entity that entirely or partially owns of record and/or beneficially owns (directly or through another person or entity) such person and/or entity  
15 and/or any Affiliate of such person or entity.

“Products and/or Services” means any products, goods, equipment, raw materials, tools, services, intellectual property, contracts, contract rights, licenses, lease interests in real property or equipment, and/or any other tangible or intangible assets of any nature whatsoever. Products  
20 and/or Services also include any investment banking, broker-dealer, legal, accounting, consulting and/or other services useful in any Investor, Issuer, Vendor or other person or entity entering into a Vendor Sharing arrangement, an Issuer Sharing Arrangement, any Affiliated Investment Transaction and/or any other investment transaction.

25 2. Sharing Payments pursuant to Section 1 above shall be made [within \_\_\_\_ ( ) business day(s) after payment [payments become payable] to, or on behalf of, or for the benefit of any Vendor] [or at the same time as payments [payments become payable] to, or on behalf of or for the benefit of, any Vendor] for Products and/or Services.

30 3. The amount of Sharing Payments made by, or on behalf of, or for the benefit of, Issuer [Agent] pursuant to this Agreement is subject to the limitations, if any, described on Schedule 3 hereto.

4. Sharing Payments shall be divided among the Investors [Agents] [Licensors] as specified on Schedule 1 hereto. [Agent shall disburse the Sharing Payments as specified in the Agency Agreement dated \_\_\_\_\_ between Agent and Investors [Issuer] [Vendor] [Licensor].]

5. Issuer agrees that Issuer and all its Affiliates will exclusively use the Vendors listed on Schedule 2 hereto (and/or their Affiliates) [and Vendors designated by Investors [Agent] [Licensor] (and/or their Affiliates)] for the Products and/or Services listed on Schedule 2 hereto, unless approved by [Agent] [Licensor] Investors entitled to receive a majority of the Sharing Payments due pursuant to this Agreement as determined by Schedule 1 hereto (a "Majority in Interest"). A Majority in Interest of Investors [Agent] [Licensor] may add or delete Vendors to Schedule 2 hereto by sending Issuer a new Schedule 2 signed by a Majority in Interest [Agent] [Licensor].

[6. This Agreement is executed pursuant to a license granted by \_\_\_\_\_ ("Licensor"). Licensor is a third party beneficiary of this Agreement.]

7. This Agreement can be amended or terminated only in writing signed by:

- (i) Issuer; and
- (ii) [a Majority in Interest of the Investors][Agent]; and
- (iii) [Licensor];
- (iv) [Vendor]; and
- (v) [Agent]

Notwithstanding the foregoing, no amendment to this Agreement, which treats any Investor differently than any other Investor, shall be effective, unless signed by such Investor.

[8. The rights of Investors under this Agreement may not be assigned or waived by any Investor. Upon any purported assignment or waiver, such rights shall be immediately transferred to the Investors who have not attempted to assign or waive [If all Investors have attempted to assign or waive, all such rights shall be immediately transferred to Licensor].]



[9. Within \_\_\_\_\_ ( ) days after the end of each calendar quarter (March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup>), Issuer [Vendor] shall deliver to Investors [Agent] [Licensor]:

- (i) a statement of all payments made [or which becomes payable] by Issuer, or on behalf of, or for the benefit of [Agent] and/or any Affiliate of Issuer, to, or on behalf of, or for the benefit of, Vendor (and/or any Affiliates of Vendor) or any designee of Vendor during the preceding quarter with the amount of payments made [or due], payment dates and a brief description of the Products and/or Services; and
- (ii) a statement of all Sharing Payments made by, or on behalf of, or for the benefit of, Issuer and, or any of its Affiliates during the preceding calendar quarter.

[10. Upon written request signed by a Majority in Interest of the Investors [Agent] [Licensor], Issuer [Vendor] shall allow a representative of the Investors [Agent] [Licensor] to review the books and records of the Issuer [Vendor] within a reasonable time after written notice from the Majority in Interest of Investors [Agent] [Licensor] to verify all Sharing Payments that are due have been made. Any Sharing Payment not made when due shall be paid within ten (10) business days after written demand by a Majority in Interest of the Investors [Agent] [Licensor], together with interest from the original due date until the payment date at a rate of \_\_\_\_ percent (\_\_\_\_%) per annum, compounded quarterly.]

[11. Issuer hereby grants Investors [Agent] [Licensor] a security interest in all the tangible and intangible assets of Issuer to secure the obligations of Issuer pursuant to this Agreement. Investors [Agent] [Licensor] shall have all the rights of a secured party under the Uniform Commercial Code of the State of \_\_\_\_\_. The rights of Investors hereunder shall be exercised as determined in writing by a Majority in Interest of the Investors. Issuer shall execute and deliver such documents as a Majority in Interest of the Investors [Agent] [Licensor] shall request to perfect the security interest granted in this Section.]

12. In the event of a dispute between the parties, the non-prevailing party shall pay the legal fees and expenses of the prevailing parties in the dispute.

13. This Agreement is subject to the laws of the State of \_\_\_\_\_. Any dispute relating to this Agreement may be brought only in the Federal or State courts located in \_\_\_\_\_.

5 IN WITNESS WHEREOF, the parties hereby executed and deliver this Agreement.

ISSUER:

INVESTORS:

10 \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15  
**SCHEDULE 1**  
**INVESTOR SCHEDULE**

20 Investor Name and Address

Percentage Interest

**SCHEDULE 2**  
**VENDOR SCHEDULE**

25 Vendor Name and Address

Exclusive Provider of  
Type of Product and/or Service

30  
**SCHEDULE 3**  
**LIMITATIONS ON AMOUNT OF PAYMENTS**

35 ☐ No Limitations

☐ \_\_\_\_% of Payments for Products and/or Services made by, or on behalf of, or for the benefit of, Issuer and/or its Affiliates on or before \_\_\_\_\_. [Note: The percentage may be the same for all Products and/or Services and Vendors or different percentages may be used for different Products and/or Services and Vendors].

40 ☐ Up to \$\_\_\_\_\_ total amount of Sharing Payments.

Vendor Sharing Arrangements may be in stand alone agreements or other documents, or be incorporated into other agreements or documents, including, without limitation, promissory notes (whether or not convertible or secured or unsecured, recourse or non-recourse), debentures, warrants, options, certificates or articles of incorporation, stock redemption agreements and/or other financial or investment agreements or instruments. A sample Vendor Sharing Arrangement is set forth below. Provisions from one agreement to the next may vary depending on the circumstances and goals of the parties and this sample is provided only as an example of one preferred embodiment of the invention. [Brackets] indicate an example of alternative language that might be added in addition to, or in lieu of, the language not in [brackets].

### SAMPLE FORM OF VENDOR SHARING ARRANGEMENT

AGREEMENT dated as of \_\_\_\_\_ between [\_\_\_\_\_, a \_\_\_\_\_ corporation (“Issuer”)] and \_\_\_\_\_ the investors listed on Schedule 1 hereto (“Investors”) and \_\_\_\_\_ (“Vendor”) [and \_\_\_\_\_ (“Agent”) [and \_\_\_\_\_ (“Licensor”)]].

### RECITALS

To induce \_\_\_\_\_ (“Issuer”) to purchase the Products and/or Services described Schedule 2 hereto (“Products and/or Services”) [and Investors to purchase the Securities described on Schedule 1 hereto], the parties hereby agree as follows:

1. Vendor [Agent] shall make payments (“Sharing Payments”) to Investors [Agent] [Licensor] equal to \_\_\_\_\_ percent (\_\_\_\_%) of the amount paid [or which becomes payable by, or on behalf of, or for the benefit of Issuer [Agent] and/or any of its Affiliates to, or on behalf of, or for the benefit of, Vendor [Agent] and/or any of its Affiliates on or after \_\_\_\_\_ [Add Date] for Products and/or Services. A copy of the agreement between Issuer and Vendor with the pricing, terms and conditions is attached to this Agreement as **Appendix A**.

“Affiliate” Someone is an “Affiliate” of another person or entity if they are (i) an “affiliate as defined in Rule 405 of the Securities and Exchange Commission promulgated pursuant to the

Securities Act of 1933, as amended and any successor rule or regulation, (ii) an officer, director, manager, partner, shareholder, member or other full or part record and/or beneficial owner (directly or through another person or entity) of such person or entity and/or any Affiliate of such person or entity, (iii) entirely or partially owned of record and/or beneficially owned (directly or  
5 through another person or entity) by such person or entity and/or any Affiliate of such person or entity, and/or (iv) entirely or partially owned of record and/or beneficially owned (directly or through another person or entity) by a person or entity that entirely or partially owns of record and/or beneficially owns (directly or through another person or entity) such person and/or entity and/or any Affiliate of such person or entity.

10 “Products and/or Services” means any products, goods, equipment, raw materials, tools, services, intellectual property, contracts, contract rights, licenses, lease interests in real property or equipment, and/or any other tangible or intangible assets of any nature whatsoever. Products and/or Services also include any investment banking, broker-dealer, legal, accounting, consulting  
15 and/or other services useful in any Investor, Issuer, Vendor or other person or entity entering into a Vendor Sharing arrangement, an Issuer Sharing Arrangement, any Affiliated Investment Transaction and/or any other investment transaction.

2. Sharing Payments pursuant to Section 1 above shall be made within \_\_\_\_ ( )  
20 business day(s) after payment [payment becomes payable] to, or on behalf of, or for the benefit of, Vendor [Agent]. [or at the same time as payment [payment becomes payable] to, or on behalf of, or for the benefit of, Vendor [Agent]] for Products and/or Services.

3. The amount of Sharing Payments made by, or on behalf of, or for the benefit of,  
25 Vendor pursuant to this Agreement is subject to the limitations, if any, described on Schedule 3 hereto.

4. Sharing Payments shall be divided among the Investors [Agent] [Licensor] as specified on Schedule 1 hereto. [Agent shall disburse the Sharing Payments as specified in the  
30 Agency Agreement dated \_\_\_\_\_ between Investors and Agent.]

[5. Issuer and its Affiliates will exclusively use Vendor and/or its Affiliates for the Products and/or Services listed on Schedule 2 hereto [unless otherwise approved by [Agent]

[Licensor] Investors entitled to receive a Majority of the Sharing Payments payable pursuant to this Agreement as determined by Schedule 1 hereto (a “Majority in Interest”) [and Vendor]].

5 [6. This Agreement is executed pursuant to a license granted by \_\_\_\_\_  
 (“Licensor”). Licensor is a third party beneficiary of this Agreement.]

7. This Agreement can only be amended or terminated only in writing signed by:  
(i) [Issuer];  
(ii) a Majority in Interest of the Investors;  
10 (iii) [Licensor; ]  
(iv) [Vendor;] and  
(v) [Agent].

15 Notwithstanding the foregoing, no amendment to this Agreement, which treats  
any Investor differently than any other Investor, shall be effective unless signed by such Investor.

[8. The rights of Investors under this Agreement may not be assigned or waived by  
an Investor. Upon any purported assignment or waiver, such rights shall be immediately  
transferred to the Investors who have not attempted to assign or waive [If all Investors have  
20 attempted to assign or waive, all such rights shall be immediately transferred to Licensor].]

[9. Within \_\_\_\_\_ ( ) days after the end of each calendar quarter (March 31<sup>st</sup>,  
June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup>), Vendor [Issuer] shall deliver to Investors [Agent]  
and [Licensor]:

25 (i) a statement of all payments made [or which becomes due] by, or on behalf  
of, or for the benefit of, Issuer and/or any of its Affiliates to, or on behalf  
of, or for the benefit of, Vendor and/or any of its Affiliates [Agent]  
[Licensor] during the preceding quarter with the amount of payments  
made [or due] and a brief description of the Products and/or Services; and  
30 (ii) a statement of all Sharing Payments made by, or on behalf of, or for the  
benefit of, Vendor during the calendar quarter.]

[10. Upon written request signed by a Majority in Interest of the Investors [Agent], [Issuer] [Licensor] Vendor [Issuer] shall allow a representative of the Investors [Agent] [Licensor] to review within a reasonable time after written notice from the Majority in Interest of Investors [Agent] [Licensor] the books and records of the [Issuer] Vendor to verify all Sharing Payments that are due have been made. Any Sharing Payment not made when due shall be paid within ten (10) business days after written demand by a Majority in Interest of the Investors [Agent] [Licensor], together with interest from the original due date until the payment date at a rate of \_\_\_\_ percent (\_\_\_\_%) per annum, compounded quarterly.]

11. In the event of a dispute between the parties, the non-prevailing party shall pay the legal fees and expenses of the prevailing parties in the dispute.

[12. Vendor [Issuer] hereby grants Investors [Agent] [Licensor] a security interest in all the tangible and intangible assets of Vendor [Issuer] to secure the obligations of Vendor [Issuer] pursuant to this Agreement. Investors [Agent] [Licensor] shall have all the rights of a secured party under the Uniform Commercial Code of the State of \_\_\_\_\_. The rights of Investors hereunder shall be exercised as determined in writing by a Majority in Interest of the Investors. Vendor [Issuer] shall execute and deliver such documents as a Majority in Interest of the Investors [Agent] [Licensor] shall request to perfect the security interest granted in this Section.]

13. This Agreement is subject to the laws of the State of \_\_\_\_\_. Any dispute relating to this Agreement may be brought only in the Federal or State courts located in \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereby executed and deliver this Agreement.

VENDOR:

INVESTORS:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SCHEDULE 1**  
**INVESTOR SCHEDULE**

Investor Name and Address

Percentage Interest

5

**SCHEDULE 2**  
**VENDOR SCHEDULE**

Vendor Name and Address

Description of  
Type of Product and/or Service

10

**SCHEDULE 3**  
**LIMITATIONS ON AMOUNT OF PAYMENTS**

15

☐ No Limitations

☐ \_\_\_\_ % of Payments for Products and/or Services received by, or on behalf of, or for the benefit of, Vendor and/or its Affiliates on or before \_\_\_\_\_. [Note: The percentage may be the same for all Products and/or Services, or different percentages may be used for different Products and/or Services.]

20

☐ Up to \$\_\_\_\_\_ total amount of Sharing Payments.

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**Sample Language to Include in other Documents**

Provisions that make different types of agreements, instruments and documents into Sharing Arrangements may be incorporated into many types agreements or documents, including, without limitation, promissory notes (whether or not convertible or secured or unsecured, recourse or non-recourse), debentures, warrants, options, certificates or articles of incorporation, stock redemption agreement and/or other financial or investment agreements or instruments. Sample provisions for making these other documents into Sharing Arrangements is set forth below. Provisions from one agreement, instrument or other document to the next may vary depending on the circumstances and goals of the parties and these samples are provided only as examples of one of many embodiments of the invention. [Brackets] indicate examples of language that may be added in addition to, or in lieu of, language that is not in [brackets].

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## Promissory Notes

Addition of the following language to a standard promissory note would make the promissory note part of an Issuer Sharing Arrangement:

5 Issuer shall make payments (“Sharing Payments”) to Note holder as and when Issuer and/or one or more of its Affiliates purchase Products and/or Services from the persons or entities listed on Schedule 1 hereto (“Vendors”) and/or from one or more Affiliates of any Vendor. The amount of each Sharing Payment shall be the Percentage listed on Schedule 1 hereto of the amount paid  
10 to, on behalf of, or for the benefit of, the Vendors and/or one or more of their Affiliates. Sharing Payments shall continue to be made until an amount of Sharing Payments equal to the full principal amount of this Note, plus accrued interest, has been paid. [Except for the obligation to make Sharing Payments, Issuer shall have no obligation to make any payments pursuant to this Note.]

## 15 Warrants

Addition of the following language to a Warrant would make the Warrant part of an Issuer Sharing arrangement:

20 The number of shares issuable upon exercise of this Warrant shall be \_\_\_\_\_ (the Warrant Shares’), except that the number of Warrant Shares issuable upon exercise of this Warrant shall decrease at a rate of one Warrant Share for each \_\_\_\_\_ of Sharing Payments made by the Issuer to the Warrant holder. Issuer shall make payments (“Sharing Payments”) to Warrant  
25 holder as and when the Issuer and/or one or more of its Affiliates purchase Products and/or Services from the persons or entities listed on Schedule 1 hereto (“Vendors”) and/or from one or more Affiliates of any Vendor. The amount of each Sharing Payment shall be the Percentage listed on Schedule 1 hereto of the amount paid to, on behalf of, or for the benefit of, the Vendors and/or one or more of their Affiliates. Sharing Payments shall continue to be made until the  
30 number of Warrant Shares issuable upon exercise of this Warrant, together with all Warrant Shares previously issued upon exercise of this Warrant, is reduced to \_\_\_\_\_ Warrant Shares.



## **Certificate of Incorporation**

Addition of the following language to the Certificate of Incorporation of an Issuer would make the Certificate of Incorporation part of an Issuer Sharing Arrangement:

5 The Issuer shall pay ("Sharing Dividend Payments") on the \_\_\_\_ day of each of \_\_\_\_  
of each \_\_\_\_ to holders of record of its \_\_\_\_ Stock, an amount equal to the Percentage  
listed below of the amount paid to, on behalf of, or for the benefit of, the persons and entities  
listed below ("Vendors") and/or one or more of their Affiliates for the Products and/or Services  
10 listed below during the preceding calendar \_\_\_\_.

In addition, or in the alternative, a Certificate of Incorporation could include the following provision:

15 The Issuer shall redeem on the \_\_\_\_ day of each of \_\_\_\_ of each \_\_\_\_ from holders  
of record of its \_\_\_\_ Stock, a number of shares of \_\_\_\_ Stock equal to the quotient derived  
by dividing (i) an amount equal to the Percentage listed below of the amount paid to, on behalf  
of, or for the benefit of, the persons and entities listed below ("Vendors") and/or one or more of  
their Affiliates for the Products and/or Services listed below during the preceding calendar  
20 \_\_\_\_ by (ii) \$ \_\_\_\_.

## **Stock Purchase or Redemption Agreements**

25 Addition of the following language to a Stock Purchase or Redemption Agreement between an  
Issuer and one or more Investors would make the Stock Purchase or Redemption Agreement part  
of an Issuer Sharing Arrangement:

The Issuer shall repurchase on the \_\_\_\_ day of each of \_\_\_\_ of each \_\_\_\_ from the  
30 Stockholder, a number of shares of \_\_\_\_ Stock equal to the quotient derived by dividing (i) an  
amount equal to the Percentage listed below of the amount paid to, on behalf of, or for the  
benefit of, the persons and entities listed below ("Vendors") and/or one or more of their  
Affiliates for the Products and/or Services listed below during the preceding calendar \_\_\_\_  
by (ii) \$ \_\_\_\_.

The foregoing are only examples of the type of language used to make different types of documents part of a Sharing Arrangement. The invention covered by this Patent includes all types of provisions that cause any agreement, arrangement, instrument or other document to fall within the definition of a Sharing Arrangement.

### **Preferred Embodiments of Invention.**

The number of steps listed in each Preferred Embodiment below do not reflect which event occurs before or after any other event.

One preferred embodiment of the invention is illustrated by FIGURE 1 below:

SEE FIGURE 1

#### **Description of basic Issuer Sharing Arrangement as illustrated in FIGURE 1:**

- Step 1.** Investor (101) invests in Issuer (103).
- Step 2.** Vendor (105) sells Products and Services to Issuer (103).
- Step 3.** Issuer (103) pays Vendor (105) for Products and Services.
- Step 4.** Issuer (103) makes Sharing Payment to Investor (101) as specified in the Issuer Sharing Arrangement.

Another preferred embodiment of the invention utilizing a Vendor Sharing Arrangement is illustrated in FIGURE 2 below:

SEE FIGURE 2

#### **Description of basic Vendor Sharing Arrangement as illustrated in FIGURE 2:**

- Step 1.** Investor (201) invests in Issuer (203).
- Step 2.** Vendor (205) sells Products and Services to Issuer (203).
- Step 3.** Issuer (203) pays Vendor (205) for Products and Services
- Step 4.** Vendor (205) makes Sharing Payment to Investor (201) as specified in the Vendor Sharing Arrangement.

The Issuer may become a party to the Vendor Sharing Arrangement, or not. The same transaction could be achieved if Investor and Issuer sign an Issuer Sharing Arrangement and Vendor assumes the obligations of Issuer under the Issuer Sharing Arrangement.

- 5 Another preferred embodiment of the invention is to utilize either an Issuer Sharing Arrangement (as illustrated in FIGURE 1) or a Vendor Sharing Agreement (as illustrated in FIGURE 2), and to provide in the arrangement that payments will be made by Issuer to an Agent for disbursement in accordance with the terms of the Issuer Sharing Arrangement and/or Vendor Sharing Arrangement. This transaction is illustrated in FIGURE 3 below:

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SEE FIGURE 3

Description of Issuer Sharing Arrangement and Vendor Sharing Arrangement utilizing Agent to make Sharing Payments as illustrated in FIGURE 3:

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- Step 1.** Investor (301) invests in Issuer (303)  
**Step 2.** Issuer (303) purchases Products and Services from Vendor (305)  
**Step 3.** Issuer (303) makes payment to Agent (307) pursuant to Issuer Sharing Arrangement  
**Step 4.** Agent (307) makes payments to Vendor (305) for Products and/or Services  
**Step 5.** Vendor (305) makes payment to Agent (307) pursuant to Vendor Sharing Arrangement  
**Step 6.** Agent (307) makes Sharing Payment to Investor (301)

Another preferred embodiment of the invention is to utilize either an Issuer Sharing Arrangement and/or a Vendor Sharing Arrangement to provide in the arrangement that all or part of the investment will be paid by Investors to an Agent for disbursement to the Issuer, Vendors, and  
20 Investors in accordance with the terms of the Issuer Sharing Arrangement. This transaction is illustrated in FIGURE 4 below.

SEE FIGURE 4

Description of Issuer Sharing Arrangement and Vendor Sharing Arrangement utilizing Agent to receive investments and make payments as illustrated in FIGURE 4:

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- Step 1.** Investor (401) invests in Issuer (403) by making (i) some payments to Issuer (403) and (ii) other payments to Agent (407)
  - Step 2.** Issuer (403) purchases Products and Services from Vendor (405).
  - Step 3.** Agent (407) pays Vendor (405) on behalf of Issuer (403) for Products and Services.
  - Step 4.** Agent (407) makes Sharing Payments to Investors (401) on behalf of (i) Issuer (403) pursuant to Issuer Sharing Arrangement and (ii) Vendor (405) pursuant to Vendor Sharing Arrangement.
  - Step 5.** Agent (407) pays remainder of investment to Issuer (403).

By providing all or part of the investment funds to the Agent, the Investor gains more assurance that funds will be allocated in accordance with the terms of the Issuer Sharing Arrangement or Vendor Sharing Arrangement, which may require that all or an stated portion of Issuer expenditures result in Sharing Payments.

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Another preferred embodiment of the invention is for the payments pursuant to the Issuer Sharing Arrangement and/or Vendor Sharing Arrangement to be allocated for reinvestment in Issuer in a later round of investment. Payment pursuant to the Issuer Sharing Arrangement and/or Vendor Sharing Arrangement can be made either to Investor, or to an entity owned by one or more Investors, on the same terms as a prior investment, or on other terms specified in the Issuer Sharing Arrangement and/or Vendor Sharing Arrangement. An Agent could be used or not.

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20 SEE FIGURE 5

Description of Issuer Sharing Arrangement and Vendor Sharing Arrangement where Sharing Payments are reinvested in Issuer as illustrated in FIGURE 5:

- Step 1.** Investor (501) invests in Issuer (503).
- Step 2.** Issuer (503) purchases Products and Services from Vendor (505).
- Step 3.** Issuer (503) pays Vendor (505) for Products and Services.
- Step 4.** Issuer (503) makes Sharing Payments to Agent, Investment Entity or Escrow Account (507) pursuant to Issuer Sharing Arrangement.
- Step 5.** Vendor (505) makes Sharing Payments to Agent, Investment Entity or Escrow Account (507) pursuant to Vendor Sharing Arrangement.
- Step 6.** Agent, Investment Entity or Escrow Account (507) reinvests Sharing Payments in Issuer (503) on behalf of Investor (501).

The embodiment of the invention illustrated in FIGURE 5 may be used if a cash return is not important to Investor, and where the Investor's goals are (i) to have money to invest in later rounds of investment to avoid dilution, and (ii) to play a more significant role in establishing the valuation and other terms of investment in the later investment round. The embodiment of the invention illustrated in FIGURE 5 is also useful where (i) the Issuer desires to have access to the additional capital from Investor and/or (ii) Investor, Vendor and/or Issuer determine later rounds of investors are more likely not to object to the Issuer Sharing Arrangement or to the Vendor Sharing Arrangement if the Sharing Payments are to be reinvested in Issuer.

Another preferred embodiment of the invention is to utilize the Sharing Payments to invest in other companies to diversify the investment portfolio of Investor. This embodiment of the investment may be utilized with either or both of the Issuer Sharing Arrangement or the Vendor Sharing Arrangement, in each case, with or without the use of an Agent.

SEE FIGURE 6

Description of Issuer Sharing Arrangement and Vendor Sharing Arrangement with Agent to make Sharing Payments to Investment Entity to Diversify Investment as illustrated in FIGURE 6:

- Step 1.** Investor (601) makes investment in Issuer (603).
- Step 2.** Issuer (603) purchases Products and Services from Vendor (605).
- Step 3.** Issuer (603) makes payments to Agent (607).
- Step 4.** Agent (607) pays Vendor (605) for Products and Services.
- Step 5.** Agent (607) makes Sharing Payments to Investment Entity (609) (which is owned in whole or in part by Investor (601)) pursuant to Issuer Sharing Arrangement and/or Vendor Sharing Arrangement.
- Step 6.** Investment Entity (609) invests in new companies – Newco (611) and Newco (613).

Having thus described the invention, the same will become better understood from the appended  
5 claims in which it is set forth in an non-limiting manner.